

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Shytique Kelly,

Plaintiff,

— against —

Ileshema Thomas, Kenneth Muller, Michael  
Spock, Christopher Hart, Jorge Ruiz, Shakeef  
Bailey, Matthew Cortes, and Daniel Piper;

Defendants.

Case No. 23-CV-2597

AMENDED COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1. Plaintiff currently resides at Cocksackie Correctional Facility.
2. This is a civil rights action, pursuant to 42 U.S.C. § 1983, seeking damages for Defendants' brutal assault of Mr. Kelly while he resided at Green Haven Correctional Facility.
3. Plaintiff seeks damages under the Eighth Amendment.

JURISDICTION AND VENUE

4. Jurisdiction is proper as these claims arise under Federal question jurisdiction.
5. Venue is proper as the events underlying this action occurred in the Southern District of New York.

## **PARTIES**

6. Plaintiff Shytique Kelly is an inmate in New York State Department of Corrections and Community Supervision (“DOCCS”) custody in Coxsackie, New York.

7. Defendant Ileshema Thomas is a New York State Corrections Officer.

8. Defendant Kenneth Muller is a New York State Corrections Officer.

9. Defendant Michael A. Spock is a New York State Corrections Officer.

10. Defendant Christopher K. Hart is a New York State Corrections Officer.

11. Defendant Jorge F. Ruiz is a New York State Corrections Officer.

12. Defendant Shakeef J. Bailey is a New York State Corrections Officer.

13. Defendant Matthew E. Cortes is a New York State Corrections Officer.

14. Defendant Daniel F. Piper is a New York State Corrections Officer.

## **GENERAL ALLEGATIONS**

15. Plaintiff Shytique Kelly was brutally assaulted by eight New York State Department of Corrections and Community Supervision (“DOCCS”) officers on November 29, 2022, while residing at Green Haven Correctional Facility.

16. Plaintiff did not provoke or instigate his assault before being restrained, pepper sprayed, beaten, kicked, and racially abused by the officers.

17. In fact, the Tier III charges issued against him were dropped when the hearing officer reviewed the video, showing that Mr. Kelly had not in fact resisted and assaulted officer.<sup>1</sup>

18. On November 29, 2022, at about 1:00 p.m., Mr. Kelly was returning from meal time.

19. While on the first deck of B-Block, his cell area, near the first desk officer, he was needlessly subjected to a pat frisk by Defendant Muller even though there was no cause to believe he had any contraband in his possession.

20. Thereafter, he was pushed up against the wall by Defendant Muller.

21. Mr. Kelly was then pepper sprayed, placed in restraints, and assaulted.

22. Defendant Thomas pepper sprayed Plaintiff without justification.

23. He was then thrown to the ground by Defendants Kelly, Thomas, Cortes, and Spock.

24. Defendant Hart pepper sprayed Mr. Kelly without justification.

25. Defendants Bailey, Cortes, and Piper struck Mr. Kelly without justification.

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<sup>1</sup> Undersigned counsel has yet to receive the video and which would have allowed counsel to provide more detail as to each officers' specific actions in the assault.

26. Some defendants kneed Mr. Kelly in the head repeatedly banging it against the floor.

27. He was then yanked up by the officers, further injuring his already injured arm.

28. When he complained about the pain, one Defendant said "no one cares n\*\*\*er."

29. Mr. Kelly has never received medical treatment for the extensive injuries he suffered from this event, including dental injuries that require the removal of his teeth.

30. His eyes have permanent damage from the assault and spray.

### **FIRST CAUSE OF ACTION**

#### **Eighth Amendment *Cruel and Unusual Punishment* (Against All Defendants)**

31. Mr. Kelly repeats and realleges the foregoing paragraphs and incorporates them by reference as if fully set forth herein.

32. Defendants, individually and in concert, and acting under color of state law, deprived Mr. Kelly of his rights under the Eighth Amendments to the United States Constitution to be free from cruel and unusual punishment.

33. Defendants beat, pepper sprayed, and restrained, Mr. Kelly without justification as described above.

34. Defendants deprived Mr. Kelly of his rights intentionally, knowingly, willfully, and/or recklessly.

35. As a direct and proximate result of this unlawful conduct, Mr. Kelly sustained the damages alleged herein.

## **SECOND CAUSE OF ACTION**

### Eighth Amendment *Cruel and Unusual Punishment – Failure to Intervene* (Against All Defendants)

36. Mr. Kelly repeats and realleges the foregoing paragraphs and incorporates them by reference as if fully set forth herein.

37. Defendants deprived Mr. Kelly of his rights under the Eighth Amendments to the United States Constitution to be free from cruel and unusual punishment by failing to intervene in beating and detaining him.

38. Defendants beat Mr. Kelly without justification, after he was detained.

39. Each and every defendant could have, and did not, intervene to prevent the continued assault of Mr. Kelly.

40. The failure to intervene denied him of his rights under the Eighth Amendment.

41. Defendants deprived Mr. Kelly of his rights intentionally, knowingly, willfully, and/or recklessly.

42. As a direct and proximate result of this unlawful conduct, Mr. Kelly sustained the damages alleged herein.

WHEREFORE, Plaintiff Shytique Kelly demands judgment against the  
above-captioned Defendants as follows:

- a. For compensatory damages, jointly and severally, in an amount to be determined at trial, but not less than one million dollars;
- b. For punitive damages, jointly and severally, in an amount to be determined at trial;
- c. For reasonable attorneys' fees, costs, and disbursements, under 42 U.S.C. § 1988 and other applicable laws;
- d. For pre- and post-judgment interest as allowed by law; and
- e. For such other relief as this Court deems just and proper.

Dated: New York, New York  
March 12, 2024

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By: 

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